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8

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 PAT CLARK SPORTS, INC., a Nevada
corporation,

12
13 Plaintiff,

14 vs.

15 CHAMPION TRAILER, INC., an Indiana
corporation; CHAMPION TRAILER
16 ACQUISITION COMPANY, LLC, an Indiana
limited liability company; DC
17 INVESTMENTS, LLC, an Indiana limited
liability company; OBSIDIAN
18 ENTERPRISES, INC., a Delaware
corporation; REELCRAFT INDUSTRIES,
19 INC., an Indiana corporation; THE GATES
CORPORATION, a Delaware corporation;
20 and DOES I through X, inclusive,
21

22 Defendants.
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CASE NO: 2:06-cv-00180-PMP-LRL

**DEFENDANT DC INVESTMENTS,
LLC'S RENEWED MOTION TO
DISMISS PURSUANT TO FRCP
12(b)(2) OR ALTERNATIVELY
PURSUANT TO FRCP 12(b)(3)**

24 COMES NOW Defendant DC INVESTMENTS, LLC ("DCI"), by and through its
25 attorneys of record, Aaron D. Lovaas, Esq. and Mark A. Smith, Esq., of SHIMON &
26 LOVAAS, a Professional Corporation, and, pursuant to this Court's April 25, 2007,
27 Order, renews its Motion to Dismiss the Complaint against DCI pursuant to FRCP
28 12(b)(2) or, alternatively, pursuant to FRCP 12(b)(3).

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1 This Renewed Motion is made and based upon the following Memorandum of
2 Points and Authorities, the papers and pleadings on file herein, the attached and
3 supporting Affidavits, and any oral argument that may be had at the time of hearing of
4 this matter.

5 DATED this 28 day of January, 2008.

6 **SHIMON & LOVAAS**
7 **A PROFESSIONAL CORPORATION**

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17 **POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION AND RELEVANT FACTS**

20 DCI files this Renewed Motion to Dismiss pursuant to this Court's Order, dated
21 April 25, 2007 (Doc. #67). (See, April 25, 2007, Order, attached hereto as **Exhibit A**).
22 In the Order, the Court held that DCI's Motion to Dismiss (Doc. #52), filed January 19,
23 2007, was to renew upon expiration of a sixty (60) day discovery period. (See,
24 **Exhibit A**). The sixty (60) day discovery period commenced the date of the Order,
25 April 25, 2007, and was for the "sole purpose of determining jurisdictional facts related
26 to the alleged fraudulent transfer from Champion Acquisition to Defendant DC
27 Investments, LLC." (See, **Exhibit A**). The sixty (60) day discovery period has
28 expired. Accordingly, DCI files this Renewed Motion to Dismiss, and incorporates by
reference DCI's January 19, 2007, Motion to Dismiss (Doc. #52) and DCI's February
22, 2007, Reply to Plaintiff's Opposition to Motion to Dismiss (Doc. #64). (See, DCI's

1 Motion to Dismiss, attached hereto as Exhibit B, and DCI's Reply to Plaintiff's
 2 Opposition to Motion to Dismiss, attached hereto as Exhibit C).

3 Because DCI does not have the minimum contacts necessary to support this
 4 honorable Court's exercise of *in personam* jurisdiction over it under any "long arm
 5 statute" and the Due Process Clause of the Fifth Amendment, DCI respectfully
 6 requests the Court to dismiss Plaintiff's Amended Complaint against it pursuant to
 7 FRCP 12(b)(2) for lack of personal jurisdiction. Alternatively, DCI respectfully requests
 8 the Court to dismiss Plaintiff's Amended Complaint against it pursuant to FRCP
 9 12(b)(3) for improper venue.

10 II.

11 LEGAL ARGUMENTS

12 A. DCI DOES NOT HAVE THE MINIMUM CONTACTS NECESSARY TO 13 SUPPORT THIS COURT'S EXERCISE OF *IN PERSONAM* JURISDICTION 14 OVER DCI.

15 This case arises out of an alleged dispute involving the manufacture and sale of
 16 "race" trailers. Plaintiff has failed to allege that DCI conducted any business in
 17 Nevada, let alone that any transaction DCI was involved in occurred in Nevada.
 18 Nevada's long-arm statutes permit courts to exercise jurisdiction over a party
 19 consistent with the Due Process Clause of the Constitution of the United States. See,
 20 NRS §14.065(1). Simply stated, no minimum contacts exist in this case such that
 21 would subject DCI to this Court's exercise of *in personam* jurisdiction over DCI.

22 As the Court pointed out in its previous Order (Doc. #67), Plaintiff has
 23 presented no evidence that DCI has any regular and systematic contacts with Nevada,
 24 and, further, that Plaintiff has conceded general personal jurisdiction does not exist as
 25 to DCI. Similarly, Plaintiff is unable to provide any evidence to establish specific
 26 personal jurisdiction over DCI, including any evidence related to an alleged fraudulent
 27 transfer from Champion Acquisition to DCI. It is a plaintiff's burden to establish
 28 personal jurisdiction where a defendant moves to dismiss a complaint for lack of
 personal jurisdiction. See, *KVOS, Inc. v. Assoc. Press*, 299 U.S. 269 (1936). Even

1 after ample time for further discovery related to the issue, Plaintiff has failed to
 2 demonstrate that this honorable Court's jurisdiction over DCI is appropriate.

3 In the present case, DCI purchased a trailer from another Indiana company,
 4 never had any contact with Nevada, never had any contact with Plaintiff, and, notably,
 5 paid valid consideration for the subject trailer. As the Court also observed in its prior
 6 Order (Doc. #67), Plaintiff cannot even get over the first prong of the three (3) part test
 7 for specific jurisdiction, that DCI purposefully directed its activities towards Nevada or
 8 performed some act by which DCI purposefully availed itself of privileges of Nevada.
 9 Plaintiff has simply been unable to show purposeful availment or direction, including
 10 through allegations of fraudulent transfer. *See, Burger King Corp. v. Rudzewicz*, 471
 11 U.S. 462 (1985); *Harris Rutsky & Co. v. Bell & Clements Ltd.*, 328 F.3d 1122 (9th Cir.
 12 2003).

13 After having had the opportunity to conduct further jurisdictional discovery "for
 14 the sole purpose of determining jurisdictional facts related to the alleged fraudulent
 15 transfer from Champion Acquisition to" DCI, Plaintiff still cannot show any purposeful
 16 availment. Therefore, any exercise of specific jurisdiction over DCI in Nevada would
 17 be manifestly unreasonable, and the Complaint should be dismissed as against DCI .

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III.

CONCLUSION

Defendant DCI respectfully requests this Court to dismiss Plaintiff's Complaint against it pursuant to FRCP 12(b)(2), or, alternatively, to dismiss Plaintiff's Complaint against it pursuant to FRCP 12(b)(3).

DATED this 26 day of January, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2008, a true and correct copy of the foregoing **DEFENDANT DC INVESTMENTS, LLC'S RENEWED MOTION TO DISMISS PURSUANT TO FRCP 12(b)(2) OR ALTERNATIVELY PURSUANT TO FRCP 12(b)(3)** was electronically filed with the District Court and electronically served on the following:

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